

## REMARKS

After entry of this amendment, claims 20, 22-28, 41-50, and 56-96 will be pending for the Examiner's review and consideration. Independent claims 41, 44 and 45 have been amended. Claims 56-96 have been added. No new matter has been added. Reconsideration and allowance of the present application in view of the above amendments and the following remarks is respectfully requested.

This amendment is filed in response to the Office Action dated October 16, 2003. In the Office Action the Examiner:

- rejected claims 20, 22-28, and 41-47 under 35 U.S.C. § 102(b) as being anticipated by United States Patent No. 2,502,582 to Murphy ("Murphy"); and
- rejected claims 20, 22-28, and 41-47 under 35 U.S.C. § 102(b) as being anticipated by United States Patent No. 2,704,888 to DuBois ("DuBois").

### **Independent Claim 41**

Independent claim 41 was rejected under 35 U.S.C. § 102(b) as being anticipated by Murphy. Independent claim 41 was also rejected under 35 U.S.C. § 102(b) as being anticipated by DuBois. Since these rejections are substantially the same they will be addressed together.

Independent claim 41 has been amended to recite a first shearing element comprising, *inter alia*, a first head having a front face, a back face, and at least one outer surface, the first head having a first slot through the front and back faces and extending from the outer surface towards an interior of the first head, the first slot tapering from the at least one outer surface toward an interior of the first head. There is no disclosure, teaching, or suggestion in either Murphy or DuBois of a slot that tapers from the at least one outer surface toward an interior of the first head. Rather Murphy discloses a disc portion 15 having a slot 16 wherein the slot edges extend from the outer surface to the interior of the disc in parallel, the rear surface of each slot being rounded. *See* United States Patent No. 2,502,582, column 2, 5-11. Similarly, DuBois discloses a circular member 1 having a blade 2 wherein the edge of the blades extend from the outer surface toward the interior of the member in parallel, the rear surface of each blade is rounded. It is respectfully submitted that independent claim 41 is thus allowable over the cited prior art. Withdrawal of these rejections and allowance of independent claim 41 is respectfully requested.

Claims 20, 22-28, 42-50, and 56-58 all ultimately depend from independent claim 41 and thus, it is respectfully submitted that these claims are equally allowable. Withdrawal of these rejections and allowance of claims 20, 22-28, 42-50, and 56-58 is therefore respectfully requested.

#### **Independent Claim 59**

Independent claim 59 recites, *inter alia*, a bone plate cutting assembly comprising a first and second shearing element, each comprising a head having a first side surface, a second side surface, at least one outer surface, and a slot extending from the first side surface to the second side surface and extending from the outer surface towards an interior of the first head; wherein each slot has at least one bevelled cutting edge and a taper extending from the outer surface toward the interior of the head when viewed from the second surface. There is no disclosure, teaching, or suggestion in either Murphy or DuBois of a slot that tapers from the at least one outer surface toward an interior of the first head. Rather Murphy discloses a disc portion 15 having a slot 16 wherein the slot edges extend from the outer surface to the interior of the disc in parallel, the rear surface of each slot being rounded. *See* United States Patent No. 2,502,582, column 2, 5-11. Similarly, DuBois discloses a circular member 1 having a blade 2 wherein the edge of the blades extend from the outer surface toward the interior of the member in parallel, the rear surface of each blade is rounded. It is respectfully submitted that independent claim 59 is thus allowable over the cited prior art. Allowance of independent claim 59 is respectfully requested.

Claims 60-77 have been added to further clarify the device of independent claim 59. As claims 60-77 all ultimately depend from independent claim 59, it is respectfully submitted that these claims are equally allowable. Allowance of claims 60-77 is therefore respectfully requested.

#### **Independent Claim 78**

Independent claim 78 recites, *inter alia*, a bone plate cutting assembly comprising a first shearing element comprising a first head having a front face, a back face, and at least one outer surface, the first head having a first slot through the front and back faces and extending from the outer surface towards an interior of the first head, wherein an edge bounding the first slot is non-parallel so that the distance between the edges bounding the first slot

decreases from the outer surface toward the interior. There is no disclosure, teaching, or suggestion in either Murphy or DuBois of a slot wherein an edge bounding the first slot is non-parallel so that the distance between the edges bounding the first slot decrease from the outer surface toward the interior. Rather Murphy discloses a disc portion 15 having a slot 16 wherein the slot edges extend from the outer surface to the interior of the disc in parallel, the rear surface of each slot being rounded. See United States Patent No. 2,502,582, column 2, 5-11. Similarly, DuBois discloses a circular member 1 having a blade 2 wherein the edge of the blades extend from the outer surface toward the interior of the member in parallel, the rear surface of each blade is rounded. It is respectfully submitted that independent claim 78 is thus allowable over the cited prior art. Allowance of independent claim 78 is respectfully requested.

Claims 79-96 have been added to further clarify the device of independent claim 78. As claims 79-96 all ultimately depend from independent claim 78, it is respectfully submitted that these claims are equally allowable. Allowance of claims 79-96 is therefore respectfully requested.

In light of the above amendments and remarks, it is respectfully submitted that claims 20, 22-28, 41-50, and 56-96 are now in condition for allowance, and the Examiner is respectfully requested to reconsider this application with a view towards allowance. The Examiner is invited to call the undersigned attorney at 212-790-6348, if a telephone call could help resolve any remaining issues.

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Respectfully submitted,

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